

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Western District of TexasCase number (if known): _____ Chapter **11**☐ Check if this is an amended filing**Official Form 201****Voluntary Petition for Non-Individuals Filing for Bankruptcy**

06/22

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals*, is available.

1. Debtor's name**Southwest Mattress Sales, Inc.****2. All other names debtor used in the last 8 years****Factory Mattress Sales**

Include any assumed names, trade names, and *doing business as* names

3. Debtor's federal Employer Identification Number (EIN)**7 4 - 1 9 5 4 2 3 3****4. Debtor's address****Principal place of business****Mailing address, if different from principal place of business****4209 S. Industrial Dr.**

Number Street

Austin, TX 78744

City State ZIP Code

Travis

County

Number Street

City State ZIP Code

Location of principal assets, if different from principal place of business

Number Street

City State ZIP Code

5. Debtor's website (URL)**6. Type of debtor**☒ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))☐ Partnership (excluding LLP)☐ Other. Specify: _____

Debtor Southwest Mattress Sales, Inc.
Name

Case number (if known) _____

7. Describe debtor's business**A. Check one:**

- ☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
- ☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
- ☐ Railroad (as defined in 11 U.S.C. § 101(44))
- ☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
- ☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
- ☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
- ☒ None of the above

B. Check all that apply:

- ☐ Tax-exempt entity (as described in 26 U.S.C. § 501)
- ☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
- ☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See <http://www.uscourts.gov/four-digit-national-association-naics-codes>.

4 4 9 1**8. Under which chapter of the Bankruptcy Code is the debtor filing?**

A debtor who is a "small business debtor" must check the first subbox. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box

Check one:

- ☐ Chapter 7
- ☐ Chapter 9

☒ Chapter 11. **Check all that apply:**

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$3,024,725. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☒ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$7,500,000, and it **chooses to proceed under Subchapter V of Chapter 11**. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12**9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?**☒ No

☐ Yes. District _____ When _____ Case number _____
MM / DD / YYYY

If more than 2 cases, attach a separate list.

District _____ When _____ Case number _____
MM / DD / YYYY

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?☒ No

☐ Yes. Debtor _____ Relationship _____

List all cases. If more than 1, attach a separate list.

District _____ When _____
MM / DD / YYYY

Case number, if known _____

Debtor Southwest Mattress Sales, Inc.
Name

Case number (if known) _____

11. Why is the case filed in this district?

Check all that apply:

- ☒ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.
- ☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?☒ No☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.**Why does the property need immediate attention? (Check all that apply.)**

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety. What is the hazard?

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other _____

Where is the property?

Number Street

City State ZIP Code

Is the property insured?☐ No

☐ Yes. Insurance agency _____

Contact name _____

Phone _____

Statistical and administrative information**13. Debtor's estimation of available funds?**

Check one:

- ☒ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors

☐ 1-49 ☒ 50-99 ☐ 1,000-5,000 ☐ 5,001-10,000 ☐ 25,001-50,000 ☐ 50,000-100,000

☐ 100-199 ☐ 200-999 ☐ 10,001-25,000 ☐ More than 100,000

15. Estimated assets

☐ \$0-\$50,000 ☒ \$1,000,001-\$10 million ☐ \$500,000,001-\$1 billion

☐ \$50,001-\$100,000 ☐ \$10,000,001-\$50 million ☐ \$1,000,000,001-\$10 billion

☐ \$100,001-\$500,000 ☐ \$50,000,001-\$100 million ☐ \$10,000,000,001-\$50 billion

☐ \$500,001-\$1 million ☐ \$100,000,001-\$500 million ☐ More than \$50 billion

Debtor Southwest Mattress Sales, Inc.
Name

Case number (if known) _____

16. Estimated liabilities

- | | | |
|--|--|--|
| <input type="checkbox"/> \$0-\$50,000 | <input checked="" type="checkbox"/> \$1,000,001-\$10 million | <input type="checkbox"/> \$500,000,001-\$1 billion |
| <input type="checkbox"/> \$50,001-\$100,000 | <input type="checkbox"/> \$10,000,001-\$50 million | <input type="checkbox"/> \$1,000,000,001-\$10 billion |
| <input type="checkbox"/> \$100,001-\$500,000 | <input type="checkbox"/> \$50,000,001-\$100 million | <input type="checkbox"/> \$10,000,000,001-\$50 billion |
| <input type="checkbox"/> \$500,001-\$1 million | <input type="checkbox"/> \$100,000,001-\$500 million | <input type="checkbox"/> More than \$50 billion |

Request for Relief, Declaration, and Signatures

WARNING – Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to \$500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

- The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.
- I have been authorized to file this petition on behalf of the debtor.
- I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 6/7/2024
MM/ DD/ YYYY

X

Signature of authorized representative of debtor

Stephen Frey

Printed name

Title President

18. Signature of attorney

X

Signature of attorney for debtor

Date 06/07/2024
MM/ DD/ YYYYJason Binford

Printed name

Ross, Smith & Binford, PC

Firm name

2901 Via Fortuna Bldg. 6, Suite 450

Number Street

Austin

City

TX

State

78746

ZIP Code

(512) 351-4778

Contact phone

jason.binford@rsbfirm.com

Email address

24045499

Bar number

TX

State

**BOARD RESOLUTION AND WRITTEN CONSENT OF
SOUTHWEST MATTRESS SALES, INC.**

May 27, 2024

The undersigned, being the current member of the board of directors (the “**Board**”) of Southwest Mattress Sales, Inc. d/b/a Factory Mattress (the “**Company**”), took the following actions, provided his written consent (the “**Written Consent**”), and adopted the following resolutions:

WHEREAS the Board has considered the financial and operational conditions of the Company and its business and reviewed the historical performance of the Company, the market for the Company’s services and the current and long-term liabilities of the Company;

WHEREAS the Board has reviewed, considered, and received the recommendations and the advice of the Company’s professionals and advisors, including from Ross, Smith & Binford, PC (“**RSB**” or the “**Law Firm**”), as general bankruptcy counsel, with respect to potential avenues for relief that are available to the Company, including the possibility of pursuing a bankruptcy filing under the United States Bankruptcy Code;

Commencement of Chapter 11 Case on Behalf of the Company

NOW, THEREFORE, BE IT RESOLVED that, in the business judgment of each member of the Board, it is in the best interests of the Company and its creditors, employees, members, and other parties in interest that the Company file, or cause to be filed, a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code;

RESOLVED FURTHER that Stephen Frey, Jr., President of the Company (the “**President**”), is hereby authorized to execute, deliver and file or cause to be filed, at such time when the President determines, in his informed good faith, business judgment that it is in the best interests of the Company, with the Bankruptcy Court a voluntary petition of the Company pursuant to Chapter 11 (the “**Petition**”) of the Bankruptcy Code, in such form as prescribed by the Official Forms promulgated in connection with the Bankruptcy Code; and it is

RESOLVED FURTHER that upon the filing of the Petition as authorized by the previous resolution, the President or other duly appointed officers expressly authorized by the President to act (collectively with the President, the “**Authorized Officers**”), on behalf of the Company, be and hereby are, authorized and empowered to execute and deliver and file or cause to be filed with the Bankruptcy Court, all papers and pleadings necessary or convenient to facilitate the bankruptcy case and all of its matters and proceedings, and any and all other documents, including affidavits, necessary or appropriate in connection with the commencement of the Chapter 11 case of the Company, each in such form or forms as the Authorized Officer so acting may approve;

RESOLVED FURTHER that each Authorized Officer, on behalf of the Company, be and hereby is, authorized and empowered to execute and deliver and file or cause to be filed with the Bankruptcy Court, all papers and pleadings necessary or convenient to effect, cause or promote

the Company's reorganization pursuant to Chapter 11 of the Bankruptcy and any and all other documents, including affidavits, or oral testimony necessary or appropriate in connection with the commencement of the Chapter 11 case of the Company, in such form or forms as the Authorized Officer so acting may approve;

RESOLVED FURTHER that each Authorized Officer, on behalf of the Company, be and hereby is, authorized and empowered to take or cause to be taken any and all such further action, to execute and deliver any and all such further instruments and documents and to pay all such fees and expenses, as the Authorized Officer so acting shall deem appropriate to consummate any transactions necessary to effectuate the foregoing resolutions; provided, such attestation shall not be required for the validity of any such documents;

RESOLVED FURTHER that each Authorized Officer, on behalf of the Company, be and hereby is, authorized to certify and attest to any documents which he or she may deem necessary or appropriate to consummate any transactions necessary to effectuate the foregoing resolutions; provided, such attestation shall not be required for the validity of any such documents;

RESOLVED FURTHER that the engagement of the Law Firm in the representation of the Company as debtor, prior to and in any case commenced by the Company under the Bankruptcy Code, in accordance with the terms of the engagement letter between the Company and the Law Firm, and in all matters arising in connection therewith, is hereby approved, and each Authorized Officer be, and hereby is, authorized and empowered to retain such other attorneys, advisors, accountants, consultants or other professionals on behalf of the Company as the Authorized Officer so acting may determine to be necessary or appropriate;

RESOLVED FURTHER that each Authorized Officer, on behalf of the Company, be and hereby is, authorized to provide the Law Firm with retainers and other payments as the Authorized Officer may deem appropriate and as is mutually acceptable to the Authorized Officer and the Law Firm, and to give such instructions to the Law Firm as is deemed in the best interest of the Company, its creditors, equity security holders and other interested parties;


RESOLVED FURTHER that each Authorized Officer, on behalf of the Company, is authorized, empowered, and directed to take any further action necessary or appropriate to carry out fully the intent and accomplish the purposes of the resolutions adopted herein; and it is

RESOLVED FURTHER that all actions taken by the Authorized Officers, in the name of or on behalf of the Company, in connection with the reorganization of the Company or any matters related thereto, or by virtue of these resolutions, are hereby in all aspects ratified, confirmed, and approved.

[Signatures Appear on Following Page]

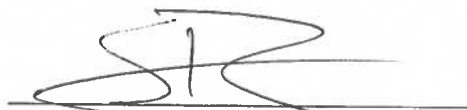
IN WITNESS WHEREOF, the undersigned has executed this Written Consent, in one or more counterparts, as of the date set forth above.


Board of Directors:



Stephen A. Frey
Sole Member of the Board of Directors

Officers:



Stephen Frey, Jr.
President

Stephen A. Frey
Secretary & Treasurer

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re: SOUTHWESTERN MATTRESS SALES, INC., Debtor.	§ § § § § §	Case No. 24-_____ Chapter 11 Subchapter V
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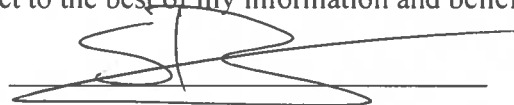
LIST OF EQUITY SECURITY HOLDERS

Pursuant to Rule 1007(a)(3) of the Federal Rules of Bankruptcy Procedure, debtor Southwestern Mattress Sales, Inc. (the "Debtor") provides the following list of holders of equity security interests of the Debtor:

Holder Name and Last Known Address or Place of Business	Type of Interest	Percentage Interest
Stephen A. Frey 4209 S. Industrial Drive Suite 375 Austin, TX 78744	Stock	50%
Elisa M. Frey 4209 S. Industrial Drive Suite 375 Austin, TX 78744	Stock	50%

I, Stephen Frey, declare under penalty of perjury that I have read the foregoing List of Equity Security Holders and that it is true and correct to the best of my information and belief.

June 7, 2024



Stephen Frey
President

B2030 (Form 2030) (12/15)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

In re **Southwestern Mattress
Sales, Inc.,
Debtor.**

Case No. _____

Chapter **11** (Subchapter V)

DISCLOSURE OF COMPENSATION OF ATTORNEY FOR DEBTOR

1. Pursuant to 11 U.S.C. § 329(a) and Fed. Bankr. P. 2016(b), I certify that I am the attorney for the above named debtor(s) and that compensation paid to me within one year before the filing of the petition in bankruptcy, or agreed to be paid to me, for services rendered or to be rendered on behalf of the debtor(s) in contemplation of or in connection with the bankruptcy case is as follows:

For legal services, I have agreed to accept.....	\$100,000 (retainer)
Prior to the filing of this statement I have received.....	\$ 75,550.08 (pre-petition)
Balance Due.....	\$0.00

2. The source of the compensation paid to me was:

☒ Debtor ☐ Other (specify)

3. The source of compensation to be paid to me is:

☒ Debtor ☐ Other (specify)

4. ☒ I have not agreed to share the above-disclosed compensation with any other person unless they are members and associates of my law firm.

☐ I have agreed to share the above-disclosed compensation with another person or persons who are not members or associates of my law firm. A copy of the agreement, together with a list of the names of the people sharing in the compensation, is attached.

5. In return for the above-disclosed fee, I have agreed to render legal service for all aspects of the bankruptcy case, including:

a. Serve as counsel of record for the Debtor in all legal aspects of the Bankruptcy Case, including without limitation the prosecution of actions on behalf of the Debtor;

b. Prepare pleadings in connection with the Bankruptcy Case; and

c. Appear before the Court to represent the interests of the Debtor in connection with the Bankruptcy Case.

6. By agreement with the debtor(s), the above-disclosed fee does not include the following services:

CERTIFICATION

I certify that the foregoing is a complete statement of any agreement or arrangement for payment to me for representation of the debtor(s) in this bankruptcy proceeding.

6/7/2024

Date


Jason Binford

Ross, Smith & Binford, PC

2901 Via Fortuna

Bldg. 6, Suite 405

Austin, TX 78746

Phone: (512) 351-4778 / Fax: (214) 377-9409

Bar No. 24045499